

4
ARTICLE APPEARED
ON PAGE 1

THE CHICAGO TRIBUNE
4 February 1980

Carter eyes secret unit to OK break-ins

WASHINGTON [AP]—The Carter administration intends to propose that a new, secret court be given power to authorize government intelligence agents to break into the homes and offices and open the mail of certain Americans.

But with the proposal still at least five days from being made public, debate already has begun over which Americans should be targets of such intrusions.

The question is whether the government can act against any American believed to be an agent of a foreign power or only against Americans suspected of criminal activity. Another question is how sure of that criminal activity the government must be.

The issue arises because President Carter plans to propose, possibly as early as Friday, a comprehensive charter to govern a wide range of activities by U.S. intelligence agencies, including the CIA, FBI, National Security Agency, and others. In his State of the Union message last month, Carter said that because of increased U.S.-Soviet tensions he wanted to loosen restrictions that were placed on these agencies after abuses by them came to light in the 1970s.

LAST WEEK, Sen. Walter D. Huddleston [D., Ky.], chairman of the Senate Intelligence Subcommittee on Charters and Guidelines, said the charter would make some spying on Americans legal if the President ruled the investigation was "essential to the national security."

But Huddleston, who has negotiated with the administration over the charter for months, said that "the very intrusive" types of spying like opening mail and break-ins, known as "black bag jobs," would require a court order.

Sources inside the government and

critics of the charter who are outside the government but involved in the negotiations confirmed that the court involved is a seven-member federal court established just two years ago.

That panel, whose entire proceedings are secret, was created by the Foreign Intelligence Surveillance Act to rule on requests for warrants for wiretapping and other electronic eavesdropping in foreign intelligence cases.

THE SOURCES and critics confirm that Carter's charter will apply the same standards for break-ins and mail-openings against Americans as the 1978 law set for wiretapping Americans.

Huddleston said that charter is a compromise that may be "to the satisfaction of no one." Civil libertarians already have said such a provision gives intelligence agencies too much leeway, and conservatives in Congress are unlikely to accept the court-order provision without a fight.

A 1972 Supreme Court decision requires the agencies to get a court warrant for wiretapping in domestic security cases, and for the court record to later become public. The agencies' conduct in foreign intelligence cases is governed by Executive Order No. 12036, signed by Carter on Jan. 24, 1978.

CARTER'S ORDER allows FBI counterintelligence agents to conduct break-ins covertly in this country, even against Americans, if the President has authorized the general activity and the attorney general has approved the specific break-in and determined that there is probable cause to believe the American is an agent of a foreign power. The

order does not define the standards for judging when an American is a foreign agent.

But Carter's order requires that mail-opening be done under a normal criminal warrant. Such warrants, governed by the Constitution's 4th Amendment, require probable cause to conclude that a crime has been committed or is about to be committed.

These are the warrants that police use in situations such as a search of a suspected burglar's apartment for stolen goods. They require that the suspect be informed of the search. Sources said such notification requirements have effectively halted the use of mail-opening in foreign intelligence cases.

THE 1978 LAW and Carter's new charter together would allow wiretapping, break-ins, and mail-openings against Americans whom the government believes are knowingly engaged in spying or other secret actions to benefit a foreign power. The government must at least suspect those actions may involve a crime.

Defenders of the charter, who asked not to be named, argue it is a reasonable compromise.

"The charter will allow mail opening again, and this constitutes a big, fat goodie for the FBI," said one defender familiar with the charter issues.

This defender conceded that the standards for granting break-in and mail-opening warrants "represent a loosening of the 4th Amendment as a matter of law but not as a matter of fact, because ever since World War II the agencies have been doing these things under a claim that the President has inherent power to order them."

STAT